

Patent Application No. 09/675,825
Docket No. NU-98-5-1

Remarks

Introduction

Status of claims

Claims 1 through 20 are pending and have been rejected.

Claims 1, 13 and 16 have been amended. Support for amended Claim 1 can be found at page 8, lines 12 through 16 of the specification. Claim 13 has been amended to correct its dependancy. Claim 16 has been amended to refer to the proper antecedent term.

The Office Action

Claims 1 through 20 have been examined on the merits.

Rejection under 35 USC § 103

Claims 1 through 20 have been rejected under 35 USC § 103(a) as being unpatentable over Mitchell and Wiedmann et al. in view of the combinations of Yotka et al. and Nakel et al. It is the Examiner's position that the claimed composition is rendered obvious by a combination of the above references. It is noted that the fact that the oligosaccharide has a different function in Applicant's invention as opposed to its function in the prior art compositions is irrelevant to the patentability of the composition.

Applicant agrees with the Examiner in that a new function of an ingredient in a composition cannot

Patent Application No. 09/675,825
Docket No. NU-98-5-1

be the basis for patentability of the composition. Yet, the presently claimed composition is novel over the cited prior art and the different (new) function of one of the ingredients indicates unobviousness.

None of the cited references discloses an acidified beverage comprising water, an edible acid component, at least one high intensity peptide sweetener and a water-soluble oligosaccharide which is selected from the group consisting of inulins, oligofructose and fructans, wherein the weight ratio of oligosaccharide to high intensity sweetener is 500:1 to 5,000:1.

Mitchell and Yotka et al. suggest to stabilize acid and heat sensitive aspartame by adding inuline.

While Yotka et al. at best disclose oligosaccharide to high intensity sweetener ratios of 300:1 (see Yotka et al., e.g. Example 8 [30.0 % raffilose, 0.1 % aspartame]), Mitchell only discloses a weight ratio of about 0.04:1 (see Mitchell at col.4, lns. 18-30 in view of col. 5, lns. 30-40 and Example 4 [40.81 g aspartame and 1.5 g chicory powder correspond to a ratio of about 1:27 which corresponds to a weight ratio of oligosaccharide to high intensity sweetener of about 0.04:1]). Both references are far away from the presently claimed ratio of 500:1 to 5,000:1. None of these references nor any of the secondary references provide any motivation for increasing the weight ratio of oligosaccharide to high intensity sweetener to 500:1 to 5,000:1. The object of these references was to stabilize aspartame against decomposition at high temperatures (Yotka et al.) and low pH (Mitchell). This is obviously achieved at the (low) ratios disclosed in these references.

The object of the present invention, however, was to compensate for the fading sweetness of a peptide sweetener in a beverage. To achieve this, a balanced amount of oligosaccharide has to be added to the peptide sweetener, such that the weight ratio of oligosaccharide to high intensity sweetener is from 500:1 to 5,000:1. Lower amounts, such as those taught in Yotka et al. and Mitchell would not have solved the above problem. As neither Yotka et al. nor Mitchell have

Patent Application No. 09/675,825
Docket No. NU-98-5-1

recognized the problem of fading sweetness in a beverage nor the potential of oligosaccharides to compensate for this loss through their own decomposition products, they are even less able to suggest to increase the amount of oligosaccharide, and, therefore, must fail as reference applied under 35 U.S.C § 103(a). Neither Wiedmann nor Nakel et al. can compensate for this deficiency.

In view of the foregoing amendments and comments, Applicant respectfully requests an early Notice of Allowance in the instant application.

Should Examiner Keith D. Hendricks have any questions regarding the present application, the Examiner is invited to contact the undersigned.

Respectfully submitted



.....
Klaus Schweitzer
see attached limited recognition

ProPat, LLC
2912 Crosby Road
Charlotte, NC 28211
Phone (704) 365-4881
Fax (704) 365-4851

FAX RECEIVED
AUG 6 2003
TC 1700